IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

Crl.MC.No. 1233 of 2006()

ST.121/2006 of JUDL. MAGISTRATE OF FIRST CLASS, PEERUMEDU

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PETITIONER: ACCUSED:

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1. PEERU MUHAMMED MUSLIM JAMA-ATH,
   PEERUMEDU VILLAGE, PEERUMEDU TALUK, REPRESENTED BY
   ITS SECRETARY P.P.ABDUL MAJEED, S/O.ISMAIL BHAI,
   POOMALA VEEDU, PEERUMEDU VILLAGE,PEERUMEDU TALUK.

2. P.P. ABDUL MAJEED, S/O. ISMAIL BHAI,
   POOMALA VEEDU, PEERUMEDU VILLAGE,PEERUMEDU TALUK,
   SECRETARY, PEERU MUHAMMED MUSLIM JAMA-ATH,
   PEERUMEDU VILLAGE.

BY ADV. SRI.JACOB SEBASTIAN
SRI.A.RASHID

RESPONDENTS: RESPONDENT:

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1. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. T.M. AZAD, S/O. MAPPILA MEERAN,
   THEKKEVEEDU, PEERUMEDU VILLAGE,PEERUMEDU TALUK.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR
SRI.K.I.MAYANKUTTY MATHER
SRI.SUNIL SHANKER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1233 of 2006

Dated this the 11th day of January 2007

O R D E R

The petitioners are accused 1 and 2 in a prosecution under Section 500 of the I.P.C. It is alleged that they, by making an objectionable publication have defamed the complainant/respondent herein. The first accused is a Jama-Ath, a body/collective entity whereas the second accused is the Secretary of that entity. The complainant had arrayed both the respondents as accused obviously because the first accused is also a person coming under Section 11 of the I.P.C.

2. The petitioners have entered appearance before the learned Magistrate. They have come to this court with this petition with a prayer that the powers under Section 482 Cr.P.C may be invoked to quash the proceedings initiated against the petitioners.

3. What are the grounds? Two grounds are raised. First ground is applicable to both the accused whereas the second ground is limited in its application to the first accused Jama-Ath. The first contention is that the allegations, even if accepted in

toto, do not reveal the ingredients of the offence defined under Section 499 I.P.C punishable under Section 500 I.P.C.

4. Which is the ingredient which is lacking? I have been taken through the objectionable publication. It is alleged that it is printed and widely circulated/published. I have been taken through the imputations in the publication. I shall not encumber the records with any authentic finding on any disputed fact; but suffice it to say that I do not find any substance at this stage in the contention that the imputations if true do not defame the complainant. In particular, I take note of the imputation that the complainant is a person, who has been opposing and standing against all activities of a religious nature in the Mahal. Suffice it to say that at this stage and with the available inputs, I find no merit in the contention that the allegations in the complaint do not constitute the offence punishable under Section 499 I.P.C. The first contention therefore fails.

5. Coming to the second contention, the plea is that a company or a non-natural person cannot be held to be liable under Section 499 I.P.C in as much as such non-natural entity cannot entertain the culpable state of mind which must be there

to fasten liability under Section 499 I.P.C on any person.

6. The question appears to have been considered by the learned Single Judge in Mammootti v. Rajaji Mathew Thomas [2006(3) KLT 335]. In paragraph 14 of the said decision, it is clearly held that an offence under Section 499 I.P.C can be committed by a company – non-natural person also.

7. The learned counsel for the petitioner placing reliance on the decision in Badsha v. Income Tax Officer 1987(1) KLT 112] advances a contention that where the offence insists on a culpable and contumacious state of mind, a non-natural person cannot be held guilty of such an offence. In short, the contention is that the decision in Mammootti v. Rajaji Mathew Thomas [2006(3) KLT 335] requires re-consideration. According to me, it would be an unnecessary venture in this case to consider the said contention. At any rate, the trial must proceed against the second accused admittedly, a natural person. I am, in these circumstances, satisfied that it is not necessary at this stage of the proceedings to consider the contention that [2006(3) KLT 335] does not correctly lay down the position of law. Prima facie I am not satisfied that the said contention deserves to be

accepted.

8. In the result, this criminal miscellaneous case is dismissed but I may hasten to observe that the petitioners shall be at liberty to raise all contentions including the contention that the first accused has no culpable state of mind to attract the offence punishable under Section 499 I.P.C before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006